

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: MDL Docket No 06-1791 VRW
NATIONAL SECURITY AGENCY ORDER
TELECOMMUNICATIONS RECORDS
LITIGATION

This document relates to:

Anderson, et al v Verizon
Communications Inc, et al, No C
07-2029

Joll, et al v AT&T Corp, et al,
No C 06-5485 VRW

Herron, et al v Verizon Global
Networks, Inc, et al, No C
06-5343 VRW

Lebow, et al v BellSouth
Corporation, et al, C 07-0464 VRW

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Plaintiffs in the first of the above-captioned actions,
Anderson, et al v Verizon Communications, Inc, et al, No C 07-2029,
have moved for leave to file a motion for reconsideration of the
court's order dated June 3, 2009 (Doc #639) dismissing with leave
to amend all cases in this multidistrict litigation (MDL) matter

1 that were subject to the government defendants' motion to dismiss
2 (Doc #469). Doc #648. By the same motion, plaintiffs in the
3 remaining three cases listed on the caption (represented by the
4 same counsel as the Anderson plaintiffs) seek leave to file a
5 motion for reconsideration of the court's dismissal, by the same
6 June 3 order, of the Bellsouth Master Consolidated Complaint (Doc
7 #126). The movants assert that their motion is warranted because
8 "there has been a manifest failure by the Court to consider
9 material facts which were presented to the Court before the June 3
10 Order and which show that the above-captioned Complaints contain
11 allegations outside the limited coverage of the [FISA Amendments
12 Act of 2008, Pub L No 110-261, 122 Stat 2436 (FISAAA)]." Doc #648
13 at 2. Specifically, the movants cite allegations in the complaints
14 at issue that actionable activities commenced in February of 2001.

15 The movants have complied with Civil Local Rule (LR) 7-
16 9(a), which requires seeking leave of court before moving for
17 reconsideration and doing so before judgment is entered. Civil LR
18 7-9(b) governs the form and content of a motion for leave,
19 requiring that the moving party specifically show:

- 20 (1) That at the time of the motion for leave, a
21 material difference in fact or law exists from that
22 which was presented to the Court before entry of the
23 interlocutory order for which reconsideration is
24 sought. The party also must show that in the exercise
25 of reasonable diligence the party applying for
26 reconsideration did not know such fact or law at the
27 time of the interlocutory order; or
28 (2) The emergence of new material facts or a change of
law occurring after the time of such order; or
(3) A manifest failure by the Court to consider
material facts or dispositive legal arguments which
were presented to the Court before such interlocutory
order.

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1 The movants rely on 7-9(b)(3) in seeking reconsideration.
2 The court agrees with the movants that some or all of the
3 complaints in the MDL contain allegations that either contain no
4 specifics as to the time of the alleged conduct or include dates
5 outside the temporal limitation of the retroactive immunity
6 conferred by FISAAA, September 11, 2001 to January 17, 2007. 50
7 USC § 1885a(a)(4)(A)(i). But the court did not fail to consider
8 this obvious aspect of the complaints. The court dismissed the
9 complaints without prejudice, affording plaintiffs "an opportunity
10 to amend their complaints if they are able * * * to allege causes
11 of action not affected by the Attorney General's successful
12 invocation of section 802's immunity." Doc #639 at 45.

13 The movants assert that it was error for the court to
14 dismiss "that portion of the [McMurray] complaint that alleges
15 violations prior to September 11, 2001" and that the court should
16 have allowed those plaintiffs "to proceed with all their claims
17 * * * for actions undertaken prior to September 11, 2001." Doc
18 #648 at 3. The court disagrees.

19 Plaintiffs have been given leave to amend their
20 complaints "to allege causes of action not affected by the Attorney
21 General's successful invocation of section 802's immunity" and have
22 elected not to do so within the time provided.

23 For the reasons stated, the motions for leave to file
24 motions for reconsideration are DENIED. This order affects: In Re
25 National Security Agency Telecommunications Records Litigation
26 M 06-1791 Doc #648; Anderson, et al v Verizon Communications Inc,
27 et al, No C 07-2029 Doc #20; Joll, et al v AT&T Corp, et al, No C
28 06-5485 Doc #28; Herron, et al v Verizon Global Networks, Inc, et

1 al, No C 06-5343 Doc #27; Lebow, et al v BellSouth Corporation, et
2 al, C 07-0464 Doc #23.

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4 IT IS SO ORDERED.

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8 VAUGHN R WALKER
9 United States District Chief Judge
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